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Date: September 24, 2003 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearings

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: ☒ No: ☐

Notices Mailed On: 9-12-03 Published On: 9-11-03 Posted On: 9-12-03

TITLE: USE PERMIT NO. P-UP2003-32

Proposal: A request to operate a 13-station Internet café

Location: 142 West Calaveras Boulevard

APN: 022-24-037

RECOMMENDATION: Approval with Conditions

Applicant: Netstrife LLC, 37961 Blacow Road, Fremont, CA 94536

Property Owner: Calaveras Square, 3645 Warner Drive, San Jose, CA 95127

Previous Action(s): "S" Zone Approval

General Plan Designation: General Commercial

Present Zoning: General Commercial with an Office and "S" Zone Overlays (C2-OO-S)

Existing Land Use: Multi-tenant shopping center

Agenda Sent To: Applicant & Owner (same as above)

Attachments: Plans
Letter of description from applicant dated, August 4, 2003

PJ#2345

BACKGROUND

In July 1976, the Planning Commission approved an "S" Zone application for the development of four commercial retail buildings at Calaveras Square. Subsequent approvals include "S" Zone amendments for minor building modifications, monument signs and a sign program. Additional approvals include Use Permit No. 325 for a freestanding sign and an amendment to the existing sign program.

The Calaveras Square shopping center is located in the Midtown planning area. The center is bound by Calaveras Boulevard on the west, Abel Street on the east and Serra Way on the south. The shopping center consists of four (4) buildings with 21,000 square feet of commercial retail space and is surrounded by other commercial land uses.

THE APPLICATION

This application is submitted pursuant to Section 57 (Conditional Use Permit) and Section 19.03-1 of the Zoning Ordinance. Section 19.03-1 allows arcades with mechanical or electronic games or games of skill or science as a conditional use in the C2 district. The applicant is requesting approval to operate a 560 square foot, thirteen (13) station, internet café, which will be located at the southwest corner of the building.

In addition to general internet use, the proposed business would offer computer games, either through software or through the internet. The City's Zoning Ordinance defines an arcade as "any business establishment or premises containing seven (7) or more mechanical or electronic game type machines." Although the proposed business would meet this definition, the applicant is not proposing an arcade in the traditional sense. The Planning Commission has approved other internet cafes through the use permit process utilizing this definition.

PROJECT DESCRIPTION

The applicant proposes to provide internet access for patrons for a variety of purposes including research, e-mail, on-line shopping and interactive games. In addition the applicant will be offering limited, small-size computer classes on an infrequent basis. The internet café will also provide drinks and pre-packed snacks for patrons of the business. The proposed hours of operation will be from 10:00AM to 11:00PM on a daily basis.

The business will be able to monitor and control internet material coming onto the premises. In addition, the applicant has stated that they will not allow access to web sites that contain sexual or pornographic material.



View looking east

ISSUES

Parking

The proposed business operation is a relatively new land use, for which the City's ordinances do not address parking requirements. The City's parking ordinance allows the Planning Commission to determine the parking requirements for land uses that are not specifically addressed in the ordinance. It also allows the Commission to draw upon the experience of other local cities in reaching a determination (Milpitas Municipal Code XI-10-53.06).

The Planning Commission approved a similar type of use at the Crescent Square and Great Mall Shopping Centers. At that time the Planning Commission made a determination that this type of use

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should base their parking demand on the same requirements as a restaurant, i.e. one (1) stall per three (3) seats. Thus, based on 13 internet stations, the parking demand is 4 spaces. Currently the tenant has an allocation of 3 parking spaces, as such, the proposal will require one more parking space.

The shopping center, which includes four parcels, has a recorded reciprocal parking agreement, which allows parking to be used by all tenants of the four parcels. The parcel to the west (Bakers Square restaurant), has an excess capacity of three (3) parking spaces, such that the project can use one (1) parking space from the adjacent parcel to meet the required parking demand.

After a site visit by staff to the site, it was noticed that a repaving on a small portion of the site did not include the striping for four (4) parking spaces. Because the site depends on these four spaces to satisfy their parking demand, *staff recommends* the applicant stripe the four parking spaces.

Neighborhood/Community Impact

The proposed tenant are expected to have a positive community impact by providing a complementary use to the existing retail uses currently located in the shopping center. In addition, the project will incorporate revisions to the landscaping plan that will encourage pedestrian access and improve landscaping. Therefore, staff concludes that the restaurant as conditioned, will not negatively impact the surrounding neighborhood.

USE PERMIT FINDINGS

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The following sections explain how these findings can be made for the proposed project, as conditioned.

Conformance with the General Plan

The project conforms to the General Plan in that the use directly relates to:

Implementing Policy 2.a-I-3, which encourages economic pursuits, which will strengthen and promote development through stability and balance,

Implementing Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector, and

The proposed internet café will provide a retail high-tech type of use that serves the needs of residents of the silicon valley. Internet use is as commonplace as the television and the phone; there is a need to provide internet access, as it can be used not only for entertainment but also as an educational tool

Conformance with the Midtown Specific Plan

The project is located within the Midtown Specific Plan area, however, because this will be located in an existing building and does not trigger any Midtown upgrades. Triggers for Midtown include construction of a new building or 50% more parking required for the new use than the previous use, or

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increase of gross floor area by 10% or over 500 square feet whichever is less. Thus, the proposed project is not subject to the Midtown Design Guidelines and Standards.

Conformance with the Zoning Ordinance

The proposed project is located in the General Commercial Zoning District (C-2). Part of this district's purpose is to "include those commercial uses in which shopping may be conducted by people walking to several stores as in a center and may include uses customarily of a single-purpose character served from an immediately parked automobile." The project, with recommended conditions of approval, complies with the City's zoning ordinance for the General Commercial district, because it is a retail tenant in a multi-tenant center.

After review of the landscaping plan for the site, staff noted that landscaping (trees and shrubs) were missing from the original approved landscaping plan. Staff has had conversations with the property owner in regards to replacing the missing landscaping or submitting a revised landscape plan. Since no action has taken place since these discussion, staff will proceed with the "Administrative Citation" section of the zoning ordinance to restore landscaping per the approved landscaping plan.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit No. P-UP2003-32, based on the Findings and Special Conditions of Approval listed below.

FINDINGS

1. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the state CEQA Guidelines.
2. The proposed internet café are consistent with the City of Milpitas Zoning Ordinance and General Plan in terms of land use for General Commercial zoning as it is a retail use.
3. As conditioned, the internet café will not be detrimental or injurious to the public health, safety, and general welfare to adjacent tenants or the surrounding community because the project will not have any impacts associated with the project.

SPECIAL CONDITIONS FROM PLANNING DIVISION

1. This Use Permit No. P-UP2003-32 approval is for an approximate 560 square foot, 13-station internet café as shown on approved plans dated September 24, 2003, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use may require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. The maximum approved number of internet stations is 13. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum internet stations: 13, as per Use Permit Amendment No. P-UP2003-32 granted by the Planning Commission on September 24, 2003." (P)
3. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
4. All roof-top equipment associated with this tenant space shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which

projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)

5. The parking spaces at the northeast corner of the site shall be striped to show the 4 previously approved parking spaces. (P)
6. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
7. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
8. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI:
 - a. Adequate level of service for trash collection.
 - b. Adequate level of service for recycling services collection.

After the applicant has started its business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. All bins shall be kept out of the public view at all times. (E)

9. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

(P) = Planning Division

(E) = Engineering

NOTES TO THE APPLICANT

The following notes pertain to administration of the City codes and ordinances that are not part of the zoning ordinance regulations. The applicant shall not consider these notes as approval from any Department. Additional requirements may be made prior to permit issuance. These notes are provided to assist in the permit process if approval is granted.

PLANNING DIVISION [For further information regarding the following notes please contact Troy Fujimoto at (408) 586-3287].

1. Section 42.10 (b) of the zoning ordinance requires a noticed public hearing before the Planning Commission to amend or modify any condition of approval for this Use Permit.

BUILDING DIVISION [For further information regarding the following notes please contact Veronica Valenti at (408) 586-3241].

1. Applicable codes shall be the 2001 California Building Code, CPC, CMC, CEC, Energy Efficiency Standards, and 2002 Milpitas Municipal Code.

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2. It is mandated that a business license and certificate of occupancy be obtained prior to operating a business.
3. People with disabilities, accessible parking shall be provided as per 2001 CBC, Section 1129B.1. Accessible parking spaces shall be dispersed and located closest to the accessible entrances. One in every eight accessible parking spaces, but not less than one parking space shall be accessible as per Section 1129B.4.2
4. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2001 CBC, Section 1114.B.1.3.
5. Provide sanitary facilities. The minimum number of plumbing fixtures shall be per 2001 CBC Section 303.5 and appendix Table A-29-A. All sanitary facilities shall be fully accessible to people with disabilities as per 2001CBC, Section 1115B.
6. Counters provided for the public and in general employee area must be accessible per 2001 CBC Section 1122B. Where a single counter contains more than one transaction, at least 5%, but not less than one of each type of station shall be accessible (at least 36" long and no more than 28" to 34" high).

ENGINEERING DIVISION [For further information regarding the following notes please contact Robert Wang at (408) 586-3325].

1. It is the responsibility of the developer to obtain any necessary encroachment permits or approvals from affected agencies or private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division.
2. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit.
3. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in A Special Flood Hazard Area, Zone AE. The proposed work to the existing structure is considered a non-substantial improvement and the zone designation is given for information only.

FIRE DEPARTMENT [For further information regarding the following notes please contact Jaime Garcia at (408) 586-3369].

1. The 2001 triennial edition of the California Code of Regulations, Title 24 (California Building Standards Code) applies to all occupancies that applied for a building permit on or after November 1, 2002.
2. Submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit process.
3. Portable fire extinguishers shall be installed in occupancies and locations as set forth in the code, California Code of Regulations Title 19, Division 1, and Chapters 1 and 3 and as required by the Milpitas Fire Chief. Section 1002.1 CFC (California Fire Code).
4. The drawings submitted do not provided information as to the existence or nonexistence of a fire sprinkler system. If this building has a sprinkler system, alterations to the automatic fire sprinkler system and/or the fire detection system requires drawings to be submitted to the Fire Department for review and approval prior to alteration. Section 1001.3 CFC.

5. No approval for hazardous materials is granted with this review. If hazardous materials are intended to be stored, transported on site, used or handled, in an amount requiring a permit, a Hazardous Materials Business Plan (HMBP) shall be submitted to the Fire Department by the business responsible. If hazardous materials are not intended to be stored, transported on site, used or handled in an amount requiring a permit, a Hazardous Materials/Waste Registration Form and/or a Hazardous Materials Exemption Declaration shall be submitted to the Fire Department by the business responsible. Required submittals shall be done at the time of building permit application.
6. Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Manual operated edge- or surface-mounted flush bolts and surface bolts are prohibited. Section 1207.3 CFC.
7. Exit doors shall swing in the direction of exit travel when serving any hazardous area or when serving an occupant load of 50 or more. Section 1207.2, CFC.
8. Obstructions, including storage, shall not be placed in the required width of a means of egress, except projections as allowed by the Building Code. Means of egress shall not be obstructed in any manner and shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. Section 1203, CFC.

37961 Blacow Rd.
Fremont, CA 94539

NetStrife LLC

August 4, 2003

City of Milpitas
Planning Division
455 E. Calaveras Blvd.
Milpitas, CA 95035

Dear Sir or Madam:

Subject: Letter of Explanation Regarding the Proposal to Operate an Internet Cafe at 142 W. Calaveras

This proposal is to operate an Internet Cafe in an existing 560 square foot tenant space at 142 W. Calaveras. The tenant space will be used to provide computer access to the customers for the purposes of connecting to the Internet, playing LAN games, and participating in the computer operations and programming classes to be held in the premises. The computer resources will also be used by the staff to conduct programming research and development activities and to facilitate network-consulting operations.

The plan is to install 20 computer workstations that will be rented on a per hour basis by customers for Internet access and/or LAN gaming. Four of the above-mentioned computer workstations will be located inside a private room to be used for computer classes and software developments during off-peak computer usage. Additional four or more computers will also be installed as dedicated systems for accounting/administrative purposes, Internet and LAN servers and security video controller.

No food preparations will be done in the premises. Instead, vending machines will be installed to serve hot and cold beverages and pre-packaged snacks.

The hours of operations will be tentatively set to a starting time of 10:00 AM and a closing time of 11:00 PM Monday through Sunday.

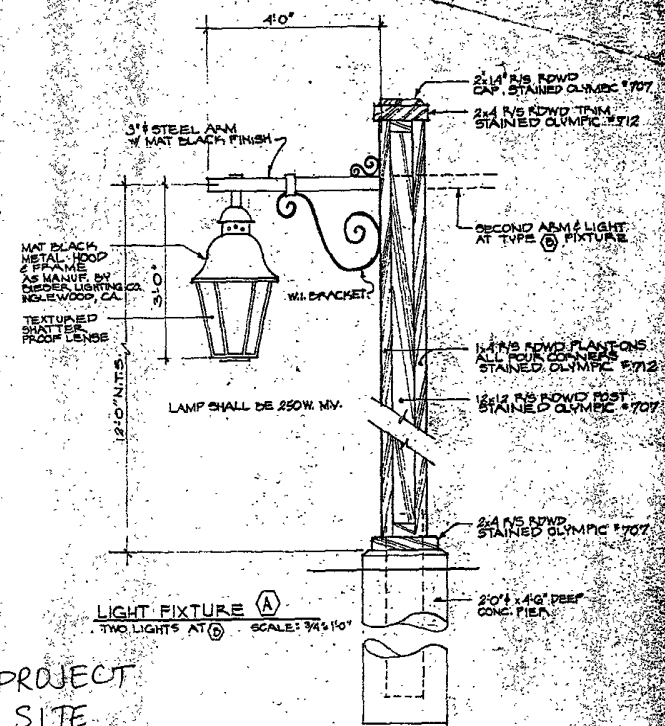
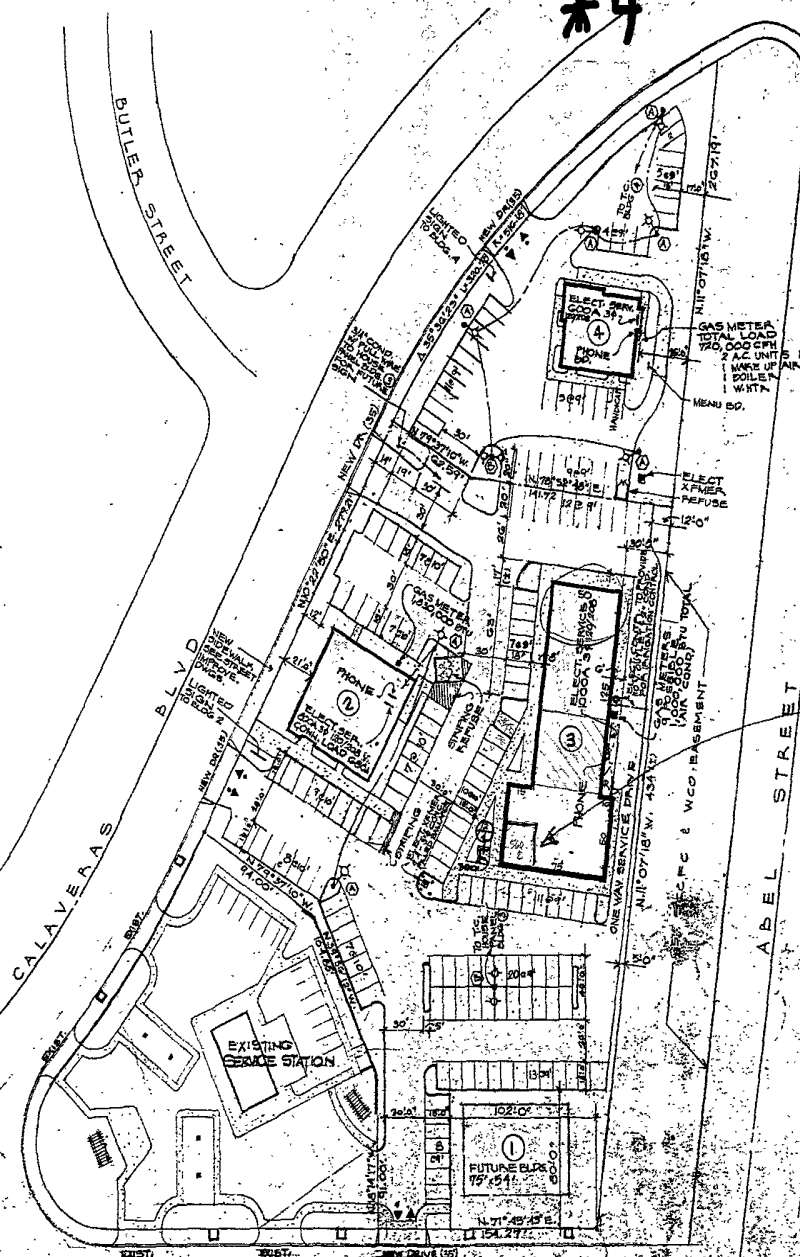
I sincerely hope this letter of explanation satisfies the requirements of the Milpitas Planning Division for the Use Permit Application.

Sincerely,

NetStrife LLC

By: 

Petronilo Nallas, Member



PROJECT SITE

DRAWINGS BY OTHERS

1. STREET IMPROVEMENT DWGS., GRADING & DRAINAGE PLAN, ON-SITE UTILITIES, & PARCEL MAP, BY MAC KAY & SONS.
2. ENLARGED SITE PLAN AND WORKING DWGS. FOR BLDGS. @ & @ BY SAMBO'S & CARL'S JR., RESPECTIVELY.
3. LANDSCAPE DWGS. BY DON KOLL COMPANY

NETSTRIFE
INTERNET ARCADE
142 W. CALAVERAS BLVD
MILPITAS, CA

SITE PLAN SCALE 1"=40'0"

TOTAL LAND AREA ± 125,714 ± 2,886 ±
BUILDING NO. 1: SHOPS & OFFICES 4,000 SQ. FT. (FUTURE)
BUILDING NO. 2: SAMBO'S 4,500 SQ. FT.
BUILDING NO. 3: SHOPS & OFFICES 10,000 SQ. FT.
BUILDING NO. 4: CARL'S JR. 2,759 SQ. FT.

TENANT SPACE
560 SQ. FT.

TOTAL BUILDINGS ± 21,059 SQ. FT.
TOTAL PARKING PROVIDED ± 163 CARS
RATIO ± 1 CAR PER 130 ± BLDG.

NOTE

1. ALL ON-SITE SIDEWALKS TO BE 4" CONC. 1/2" x 1/2" x 1/2" MIN. OVER 4" ROCK BASE, INTEGRAL COLOR (L.M. COFFIELD CO. A-54-1 "AMCO DUFFY" & SALT FINISHED). PROVIDE RIDER EXPANSION JOINTS AT 20' ± & TOOLED JOINTS HALF-WAY BETWEEN.
2. PROVIDE 6" R. RIV. IN PLACE CONC. CURBS ON SIDEWALKS AROUND ALL PARKING LOT PLANTERS. SEE SHEET 4.4 FOR DETAILS.

RECEIVED
AUG 04 2003
CITY OF MILPITAS
PLANNING DIVISION

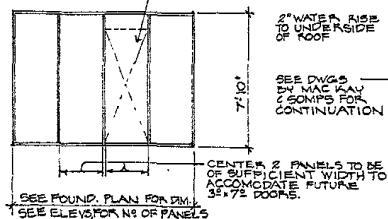
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LENNIS KOBZA, AIA, & ASSOCIATES
ARCHITECT SITE PLANNER
1000 N. GATEWAY BLVD. SUITE 100
MILPITAS, CA 95035

REVISION 1	NOV 27, 2002
REVISION 2	
REVISION 3	

CALAVERAS BLVD - SERRA WAY
PROJECT NO. 03-001
DATE: 11/14/02

SCALE: 1"=40'0"



TYR. STOREFRONT ELEV.

ALUM. STOREFRONT

ALUM. DOORS: KAWNEER, 450 SERIES #170 SERIES OR EQUAL MED. SPONZIE FINISH. W/OFFSET PIVOT HINGES, CLOSERS, NAIL SLOTS 2 INTERLOCKING CLEAR ALUM. THRESHOLDS

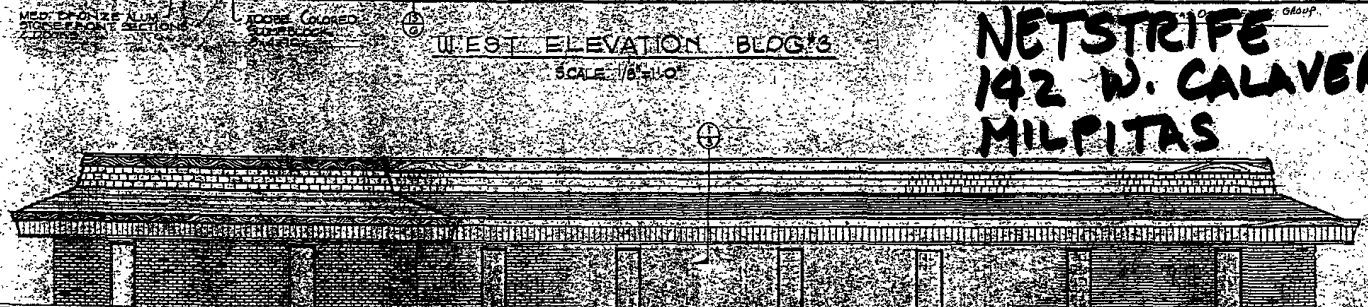
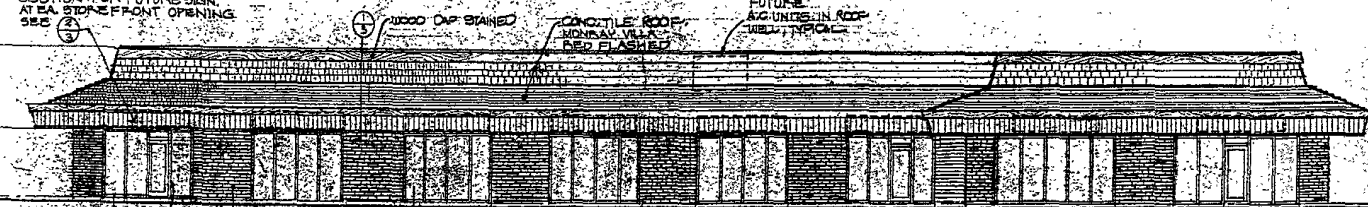
ALUM. STOREFRONT: 1/4" TEMP. GLASS (CLEAR) IN KAWNEER, 450 SERIES ALUM. FRAME, MED. SPONZIE FINISH

EXTERIOR PAINT SCHEDULE

1. WOOD 2 COATS OLYMPIC STAIN ALSO SEE
2. GALV. IRON 2 COATS K-M #1240 ACRYL-SHIELD
3. FERROUS METAL 2 COATS K-M #1000 K-LUS ENAMEL
4. SLUMPSTONE ONE COAT THOMPSON'S CLEAR WATERSEAL, 40 SQ. FT. PER GAL. MAX.

PRODUCTS OF K-M (KELLY-MOORE) AND THOMPSON'S WATERSEAL, OR APPROVED EQUAL SHALL BE INSTALLED IN STRICT ACCORDANCE WITH MANUF. PRINTED SPECS.

12'0" LONG REMOVABLE SECTION FOR FUTURE SIGN. AT EA. STOREFRONT OPENING SEE



NETSTRIFE
142 N. CALAVERAS
MILPITAS

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JENNIFER KOSKINEN & ASSOCIATES, INC.
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www.jkassociates.com

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Revised: 1
Revised: 2
Revised: 3
Revised: 4
Revised: 5
Revised: 6

142 N. CALAVERAS, SUITE 100, MILPITAS, CA 95035
DATE: 7/1/98
DRAWN BY: J. KOSKINEN
CHECKED BY: J. KOSKINEN
APPROVED BY: J. KOSKINEN